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Supreme Court, U.S.
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Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

Ashok Kashelkar Case No. 1
Petitioner
-against-

Harold Y. MacCartney, Jr et al
Respondents

ASHOK KASHELKAR Case No. 2
Petitioner
-against-

RUBIN & ROTHMAN ; et al
Respondents

On Petition For Writ of Certiorari
to the United States Court for the Second Circuit

Appendix E - Conforming to Rule 14.1(i)(vi)

Petitioner - Ashok Kashelkar - Pro Se
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Spring Valley, NY 10977
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19 pp

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Statement Of Petitioner

Ashok Kashelkar, petitioner herein, respectfully states, that, the within "material" if part of the Appellate Brief filed in The Court Of Appeals, for the Second Circuit, that offers a "distilled" view of the complaint including the exhibits.

This Appendix E offers material conforming to Rule 14.1(i)(vi)

This material "exclusively" refers to case No. 2 i.e. Ashok Kashelkar v Rubin & Rothman,et al

This petition is submitted in conformance with U. S. Supreme Court Rule 12.4, in view of the "substantially same and\or similar" questions presented in the Petition and the issues have been raised in the lower Court.

This Appendix, is a "combined" Appendix, for the two cases covered by this Petition.

Spring Valley, NY

Dated July 24, 2001

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Nomenclature of the abbreviations used hereunder.

DCM- Law memo to U. S. District Court
B- Brief to U. S. Court Of Appeals
RB- Reply Brief " "
RARG- Reargument Brief to " "

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Following is a Portion of My arguments from my Memorandum of Laws, in the District Court-Motion Practice.. Page reference 2 of 52 and so on, are from that Law Memo.

Def. Household Bank FSB's legal presence was in Illinois only.

It is necessary to "know the philosophy" of Household International (HI) business and the Laws, to understand my case

"The Debts" defendant's HI & HB-FSB, "'tried to or have collected in New York State",.from anyone, were not lawfully "extended credit **by the defendants** outside the State Of Illinois, "within a radius of 100 miles of Household Bank's principal office" at Prospect Heights, ILL; as defined in 12 CFR 561 32(a)(2)

This (U S D C SDNY) Court is requested to take judicial notice" of the fact, that, Prospect Heights and or Wood Dale, Illinois are more than l00 miles away, from ANY Geographic BOUNDARY' of New York State (the western most point, at the Erie, PA border).

Household Bank FSB (HB-FSB), must conduct it's business, subject to 12 USCS 1464 as well as subject to by 12 CFR 500 *et seq.* Defendant's business is further subject to the limitations in 15 USCS 41, *et seq.*

Defendant HI and HB-FSB's "principal" activities are monitored by the Office Of Thrift Supervision; a body within the U S Dept. Of Treasury and not by any State Authorities However, that does not permit the defendant's from conducting their activities, without any restraints by the "States ".

12 CFR 535.1 refers to "application of 15 USCS 41 et seq"; referring to Federal Trade Commission act (predominantly concerns with Interstate transaction affecting commerce)

"Statement of Policy" under section 12 CFR 556 *prohibits branching,* outside the State, in which it has it's home office (that would require HB-FSB to remain in State Of Illinois) Opening such branches also constitutes violation of 14 USCS 14645(r) [as recognized in 12 CFR 556.5(b)(1)] Provisions, for conducting "direct " business out of the State Of Illinois, is limited, under the cited subdivisions.

The "lending and investment" by Federal Savings Association (Bank) is limited by 12 CFR 560.93. This Section does not authorize, "*offering or mailing* **UNSOLICITED checks**, in Interstate Commerce, through U S Mail".

The "consumer credit"; Household Federal Savings Bank "may offer or extend" is defined in 12 CFR 561.2 and the "normal lending territory" is defined in 12 CFR 561.32.

The principal "reach " of the Household FSB business is identified to be for 1) credit for purchase of household goods 2) towards "real estate" and 3) loans secured by "real estate" within the limits of 12 CFR 500 *et seq* as well as 12 USCS 1464, *et seq*.

In fact 12 CFR 560.93(5) defines as to "whom a loan can be advanced"

For the above reasons, HB-FSB could not "open" any branch in Virginia, did not have any "branch" in Virginia, nor had "any office" in Virginia; as demonstrated by Ptf. Ex P-45 and Ptf Ex P-35. Therefore, each and every document, that, is claimed to have been "executed by an employee of HB-FSB, in Virginia [Ptf. Ex P-06 and Ptf Ex P-36] is absolute forgery. *This plaintiff has pointed to "this pivotal" aspect* of fraud, by HI and it'S subsidiaries, since the Rockland action

This plaintiffs Exhibit No P- 55 (the annual report pages), shows, that HB-FSB "acquired" other entities in the State Of Virginia

The State Of Virginia clearly show, that, HB-FSB does not have any legal presence in the Commonwealth of Virginia (please see Exhibit P-45)

Therefore, Valerie Melvin affidavit [Ptf Ex P-36] has been *cleverly "crafted" to "camouflage",* that, she "is a recovery specialist" employed by HB-FSB. This is **an "outright false Statement**, since HB-FSB never had any 'legal presence", through "it's own office" in the State Of Virginia.

Debra Shepherd or Valerie Melvin could have been employees of any other entity, under the "control" of the

defendants but, that is not the same as calling them as employees of HB-FSB"

People making false Statements under oath have been dealt with by New York Penal laws as can be seen in *People v Moses* 63 NY 2d 299, *People v Glasper* 52 NY 2d 970; *People v Ruberto* 10 NY 2d 428 and *People v McGuire* 135 NY 639.

The denial, that is made intentionally, is treated as perjury; see *People v Gleason* 285 AD 278. Even a Village Justice was removed for signing a false Statement Re Heburn 84 NY 2d 168 (1994) The list will require volumes.

I had demanded, that Debra Shepherd appear in the Court, in Rockland Action. But Justice Rudolph ignored my request. Counsel Joseph Latona prevailed upon Justice Rudolph, through his pleas in his affirmation [P-14]

Secondary Markets for "Mortgage Finance", HB-FSB & N. Y. Business Law

This plaintiff has submitted, Exhibits No. P-57 to P- 63 (attached to the accompanying affidavit) clearly show, that, HB-FSB appear to have purchased, "Mortgage Instruments" of the people in New York State, from other "lenders", on the secondary markets.

Engaging in "purchase of Mortgages ", in secondary market, outside it ' s authorised "sphere of activity" is not permitted under 12 CFR 560.30. Therefore, HB-FSB's purchases of such Mortgages (on secondary market), while HB-FSB, does not have an ..authorized presence" in New York and using New York State Courts, for any "recovery or enforcement" is absolute violation of N Y Business Corporation Law, section 1312.

The documentary Exhibits, provided herein (Ex P- 57 to P-63) show, that, not only HB-FSB instructed

various counsels to file actions in New York Courts but in fact HB-FSB "could not care at all, as to whatever claims, it's counsel may have made" while filing "the HB-FSB authorised" Judicial proceedings, in New York Courts

The submission of this plaintiff (Exhibits P-57 to P-63) is not "exhaustive" and such "HB-FSB" actions by hundreds can be tracked, throughout the State Of New York

I shall be most happy to call each of the "individual counsel", responsible for preparing the Exhibits P-57 to P-63 and have them testify, in this Court. Most illuminating "record would be created". That will benefit, not just this Court but the Office Of Thrift Supervision, as well.

Secondary Market of "other instruments", Household & NY Business Law

In the same manner, Household Recovery Services (**HRS**) engaged in "purchasing" various "papers" with deep discounting, that may include "delinquent accounts" and even those for Household Goods, sold by other merchants, for good accounts

As, these transactions are not "subject to OTS regulations [but are subject of interest to FTC] " as those of HB-FSB are, the very. fact, that, HRS "engaging in the abuse of NY State Courts, in violation of NY Business Law, section 1312 cannot be overlooked.

That is exactly how, R&R filed the 2nd action against me,

For HRS, in Rockland county, as demonstrated in the Exhibits P-49 to P-53. HRS, purchased, some of the "papers from Chemical Bank" and others, with deep discount, hoping to "make profit, by filing actions for recovery" in New York Courts.

Chemical Bank may have "sold the papers" but Chemical did not provide any correspondence, I exchanged with Chemical Bank nor provided the "arrangements Chemical reached with me", to HRS. As soon as Chemical found that, it can "sale and unload the papers, for immediate cash [not just my account but many others]" and rather not be bothered, to live up to it's obligations to me, for the simple fact, it could not care less, as to what happened to the "understanding it reached with me".

In fact, "Chemical" itself was merging with "Chase" and two of it's officials, who were dealing with me, were discharged" in the other big game of " high finance " called "merger and acquisition".

Household Credit Services & N. Y. Business Law

Exhibit P-56, clearly shows, that Household Credit Services, **(HCS)** constitute a very large business ($ 10. 9 Billions in receivables. See 1994 Annual report) for HI, throughout the United States.

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When the time comes, for enforcing the contracts or making "recovery", HCS does not go to Federal Courts but goes to N Y State Courts (in New York). Why ? Because, New York Judges don't care, to read anything, when they "don't want to".

Each such 'Judicial filing" including that in Ex P-64, in New York, violates N Y State Business Corporation Law section 1312.

The Exhibit P-64 is most instructive. for it's "brazen and blatant" perjury. I have serious doubts that the defendant therein, William Schlerberl ever raised any objections "at least" under TILA (15 USCS1600 *et seq*) There are definite provisions as to what the "debt collectors can do and what they cannot.

Mr. William Schierberl was (or perhaps still is) a partner in Wilson, Elser, et al; a Law Firm. that handles casualty related litigations (similar to MacCartney or O'Connor, McGuiness et al), for insurance carriers. It is most likely, that William Schierberl ESQ, being a practicing attorney was prepared to accept any statements (in complaint) from other practicing "attorney to be"accurate and not question it, at all. I doubt, he looked at NYS Business Corp Law. I understand the operative phrase for this conduct is "due deference".

I wonder how William Schierberl, ESQ or Samuel Newman, ESQ would testify, to simple questions about their litigation and the truth in the complaint, "tailor made" for the benefits of HCS..

Reckless disregard by HI "agents" (The Attorneys)

Not only HI subsidiaries abuse thc New York Courts but "recklessly make claims", it considers necessary to "gain entry" in New York Courts, including claims, to the effect that, HB-FSB has authority to do business in New York, [status statement required by CPLR 3015(b) & (c)] (also exemplified by Ex P-O5), Exhibits P-37, P-46, P-47, P-48, P-49, P-57, P-58, P-59, P-60, P-6I, P-62, P-63 and P-64.

This reflects upon the "total and reckless disregard" HB-FSB" have shown to the New York State, in the abuse of the State resources. It is also true, that the "courts are loathe to such conduct" and could not care "how" it ' s officers (either the counsels or the Judges) are discharging their duties

This pattern of conduct by HB-FSB, perpetrated for them by and through it's .'agents" the "respected pillars of the society" and "officers of Court"; caused multiple violations of numerous State and Federal laws. Including those relating to .'perjury , obstruction of justice, mail frauds, wire frauds and eventually Civil Rights violations of hundreds of people in New York State

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The "customs and practices" of New York Courts and it's "officers" [including the judges] to accept each others actions and representations without ANY QUESTIONS, is absolutely phenomenal. That is how the "business in Courts" is conducted.

Whether Mr Schierberl owed any money to HCS is not a question, for this argument but whether any of the subsidiary of HI conducts it's business, according to the law or not, is the "operative and relevant question". The evidence is clear, that, HCS, like other HI subsidiaries, could not care less about law.

In the current action, with all the deficiencies in the HFC Cash reserve agreement, I have pointed out, that the current counsel for the defendants should have known; that did not "stop " him from claiming, that, there was a contract. This is a perfect example of "reckless disregard to truth, his own oath and his professional and ethical duty" Counsel

Gershman is violating his duties under 22 NYCRR 1200 *et seq*.

I raised following question in Rockland action and would raise it here, again. If illegal conduct such as those of HI and it ' s subsidiaries and reckless claims, submitted by counsel of multibillion dollar corporations are given "credence" in New York Courts, perhaps the " street drug dealers" should go to Court, to recover monies people owe them.

Of course, a debtor of "a drug dealer" at present, may "face" either a "gun or knife" [by the enforcers] instead of an adverse Court judgement. If the drug dealers, go to Court, to enforce their "contracts" [they certainly would be within the STATUTE OF FRAUD] at least the lives, of the "drugees" may be spared.

It is "openly reported in the media [including TV shows, films]", that, drug dealers, do not want to KILL their clients. That is loss of future business and possible criminal problems. They would rather "negotiate" a deal, for getting their money due. Then they can return for "more business".

Drug dealer's "commercial mindedness" for "long term profit motive" is not of any lessor caliber, than of those in "Ivory Tower" in Prospect Heights, ILL.

The perpetrators in "diverse" locations may appear different, may speak with varying degree of "finesse", may enjoy different life style but have the same "profit motives"

I do not have any doubts, that, HI entities, also , would rather collect "high interest money", for a long time, than sue a person, [Please see Exhibit P- 73] Their real interest is "generating profit, for their shareholders ".

It must be kept in sight that, not only "false statements" under OATH, have been recklessly made by all the (HI) counsels, in various cases NEWLY attached as Exhibits; but caused, each of the counsel to violate **N . Y Penal Law** sections (**Relating to Perjury**) 210.05; 210.10; 210.15, 210.20; 210.35; 210.40; 210.45 But the counsels have filed those "**verified complaints**" (Exhibits P-57 to P-64) in Courts. Those acts, by themselves rise to (**offering false instruments for filing**) under NYS Penal Code 175.30 and 175.35 (**class "E" felony**.). Counsels are in further violation of N Y. S. Penal code 190.50 (**unlawful collection practices**) and N Y. S Penal Code sections 105.00; 105.05; 105.10; 105.13; 105.15; 105.17 (**Conspiracy**); 215.35; 215.40 (Tampering with physical Evidence); and 215.45 (**Compounding crime**) Thereby the same actions gave rise to violations under sections 460.20 (**Racketeering**) "**Fabrication**" is violation of N Y S Penal Code sections 175.05,175.10; 175.15; 215.35; and 215.40 (**Falsifying business record**) These are all NY. State Felonies and Misdemeanors, (identified in detail, for their Severity," **in Criminal CD section Page 8, Para 25 J to 25 m [on page 9]**)

Each counsel also violated 15 USCS 1692 *et seq* and specifically violating l5 USCA 1692e(2)(A); l5 USCA 1692f(1) ; 15 USCA l6921(2)(A): upon their filing the actions described in Exhibits P-57 to P-64 **as Debt Collectors.**

Each counsel is subject to "same treatment, at Law and no less" than *Moses*, supra 63 NY 2d 299; *Glasper*, supra 52 NY 2d 970; *Ruberto,* supra 10 NY 2d 428, *McGuire*, supra 135 NY 639; *Gleason* supra 285 AD 278; Re *Heburn*, supra 84 NY 2d 168 (1994); *Greene*, supra 205 AD 2d 218; Re

Kaiser, supra 108 AD 2d 510, as well as famous "Murray Eisen" as he was known.

Each of the counsel, was (I am speculating here) more than successful to either "get judgement in foreclosure" or reach a settlement of some sort, with each respective defendants, in those actions. In any event, the proceeds were, then sent to HB-FSB by FedEx or U S. Mail or Air Borne Express etc. for the benefit of the Household shareholders, and violated **18 USCA 1341.** Each counsel's, each separate mailing become a separate Mail fraud" as determined in *Ex Parte Henry* 123 US 372, 374.

Each of the counsel, for Household companies, used Interstate Telephone systems, to "further their schemes" to "IN F ACT" defraud those defendants" and violated **18 USCA 1343.**

Those who lost their "properties", on account of such frauds, were deprived of "equal protection of laws" in the Judicial process. Some of them were let down by their own counsels, for their failure to investigate the law

Such is a "massive scheme" to defraud, people in general

In my answer to the complaint in Rockland County, I pleaded an "affirmative defense" that, the plaintiff there [HFC Cash Reserve-Div Of HB-FSB] engaged in "non traditional" businesses. R&R never asked for any Bill of Particulars, from me in 1994.

39 USCA 3009 and Household Bank FSB

Referring to 39 USCS 3009. Defendant's counsel, has offered

the Kipperrnan citation 554 F 2d 377 (9th Clr 1977), to claim, that, the check, Household Bank FSB sent was not "merchandise" as defined by the Kipperman Court

Let me reproduce the principal aspects of the Kipperman decision:

> Trask. Sneed and P Kennedy, Circuit Judges.....
> SNEED Circuit Judge

Plaintiff-appellant Kipperman, through her father. seeks to establish a private right of action under 39 USCS §. 3009 Section 3009 makes the mailing of unsolicited "merchandise" a *per se* unfair trade practice actionable by the Federal Trade Commission Under section 3009(b), the recipient of unsolicited "merchandise" may treat the item received as a gift. The district court found there was no implied private right of action and dismissed. While we agree that the action should be dismissed, we believe the district court erred in holding that no implied private right of action exists. Thus, we affirm the dismissal of the action on grounds developed hereafter .

Discussion about Kipperman. AK suggests, that, it was necessary for plaintiff Kipperman, to "return certain application and pay a premium" in order to "commence or effect protection under insurance coverage. Kipperman failed to do so".

It is necessary to show, that, Kipperman's dismissal by the district court was based upon the DC finding that, Kipperman did not have "private rights of action ".

The 9th Circuit Court Of Appeals reversed District Court on that issue and dealt with the "merchandise" issue and dismissed because Kipperman "failed to complete a process

of returning any papers and paying any premium". The **"substance"** of placing the insurance policy in effect, was never completed.

In my (AK) case, it was not necessary, for me, to "return any papers to HB-FSB" for any reason and simply had to deposit the check in my account Therefore, my case is not "analogous'. to Kipperman, at all.

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In fact, the HB-FSB "product", I received was "ready for use or consumption, albeit by depositing in my bank". It was not necessary for me to "send anything to HB-FSB."

That is not much different, than, my using a " box of cereal" I have received many times from Kellogg or a "bar of soap" from Dial, in the mail. It does not require me to call Kellogg, get their PRIOR permission to use the "cereal" nor call Dial to use their soap(unless some may claim, that "eating cereal" or taking shower are intervening actions).

In case of "Kipperman", the insurance policy could not "become effective" unless the insurance company received a check towards premium. At the minimum sending that "premium" check becomes, "condition precedent"; an intervening action, before there is a completion of contract.

Comparing the situation and referring to the Plaintiff Exhibit P-68, now attached with my affidavit. It was necessary for my wife , to call First Deposit National Bank, to receive a "negotiable instrument" (a check) before the value of the promised "credit.' becomes effective and useful.

Since, my wife did not call, nor received any (unsolicited) check, there was no question of creating situation as that in

HFC Cash Reserve.

If HB-FSB wanted their "product" to conform to the "limitations of Kipperman " (decided in 1977, many years before HB-FSB mailed the check to me) or that under Exhibit P-68; then HB-FSB should have taken precaution and had responsibility to protect themselves, similar to First Deposit National Bank (Ex P-68).[still HB-FSB could not overcome the 12 CFR 500 et seq. Restraints]

In fact, HB-FSB's, own "printed" and poorly drafted, so called "agreement" *facially admits*, that, **1)** it is an offer and not a contract **2)** until "it" is accepted by Household, in Illinois.

What is that "it" referred to, in the body of statement above ? A signed application ? A signed document [Offer\agreement] received in their office in Illinois ? It cannot be their check, because, it does not go to HB-FSB; but goes to a consumer's bank, then to the Federal; Reserve system (for interbank transfers) Clearing House Therefore the "money"' is "out" before anyone sees the "check" and then questions of approving does not even arise [closing barn door after the horse bolted]

HB-FSB (management personnel) would not even see it, physically before the "funds are debited to their account" It's computer may.

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That is exactly, what I have argued, at all times (even since Rockland action), that, I never requested the funds by any means and never contacted HB-FSB, after receiving it.

To compare, the difference, as to what a "recipient of an

offer has to do"; attached exhibit (Ex P-68) with my affidavit, readily shows the major difference, in how HB-FSB were doing business as compared to First Deposit National Bank. (but not a FSB)

However, the "instruments" (in fact a check or a demand draft) Household Bank FSB mailed to thousands of people are called "*a product*" (so identified by Mr Gerbick, the Regional director of OTS, at Chicago, in his letter of Jan 25,1996; in para one) P-34.

The real test is the "condition precedent" prior to the use or consumption. None existed, as far as the check for $ 1,500.00 was concerned. Anything that followed (in the form of a check-book) without limitation of amounts, was nothing but continuation.

In fact Def Joseph Latona, in his affirmation [P-14] in para 12 admits, that the "arrangement was open ended and could continue, for lifetime". That renders any such arrangement subject to N Y S General Obligation Law, section 5- 701, that requires numerous elements including name, address, amount, date and subscription (signature), on that paper .

This is the "RISK" HB-FSB "assumed" and so far have benefitted, at the cost of thousands of people across the country. In my case, I balked. In fact, had I known the law, I would have dealt with the matter differently.

Besides, Kipperman "sued , seeking damages" under 39 USCS 3009 and District Court denied "Private right of Action ", to the plaintiff therein. The Court Of Appeals, 9th Circuit reversed "that decision ".

The "merchandise" aspect was 9th Circuit's *sua sponte* interpretation.

I am not suing under 39 USCS 3009 but pointing "to it" as the one section, most applicable to HI businesses, that HI entities "consciously.' have been violating for years. That further brings, millions of transactions of mail Fraud under 18 USCS 1341, at their door steps It also involves violations of 15 USCS 41 *et seq.*

"Merchandise & Product"

Webster's New International dictionary, 1945 Edition defines "merchandise" (a noun]. as ....

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....."object of commerce" "usually bought and sold in trade ".

Under the circumstances, may I suggest, that, there is very little difference between "merchandise" and a "product" In fact, Household International, through other subsidiaries, engages in"purchasing outstanding credit obligations, from other financial institution" and then "Household International-Companies" engage in "collection activities" as is demonstrated in Plaintiff's Exhibits No P-49 to P-52, as well as P-57 to P64

"Household" entities "purchase" such "financial papers" en mas, from other entities, as can easily be seen in the ."Exhibits". HRS purchased a "bundle of such RECEIVABLES, from Chemical" and also purchased the "Huffman Koos'" receivables and hoped, that, in each of the individual **"paper"**, they would **"collect"** the receivables" through normal course of "collection" or "through judicial actions" or as an "instrument of extension of credit '"

When HB-FSB (in illegal transaction-as described

heretofore) purchased the Dartmouth, Consolidated Financial or Fleet Mortgages, HB-FSB hoped to **"reap"** the benefits, for their own account.

Each ..such a product.. is traded among the "Financial Institution" and therefore each product "conforms'" to the definition of Merchandise.

In fact the News Article in NY Times (Exhibit P-70) also shows, that, the Wall Street Brokers have a "major"role, in the "transactions". Is there any question, that this " does not. affect Interstate Commerce" ?

In any event, the principal objective of 39 USCS 3009 is

> defined in the Statutory text, in. . . section (a) violation of this section constitutes an unfair method of competition and an unfair trade practice in violation of section 45(a)(1) of title 15.

That certainly ties with the declared objective of Congress, to "check" "unfair business practices"; further ascertained in 12 CFR 535 .1.

Under the Circumstances, neither AK nor any of the other persons, subjected to actions in New York Court, had any legal obligation, to 'repay" any of the monies, each one received, from Household Bank FSB, under the name of HFC Cash Reserve, that was sent in violation of 15 USCS 41 *et seq*; at any time. This matter is "fit for a class action". *" I did not make the rules I am asking for enforcement."*

Following is reproduced from My Appellate Brief- to the

Second Circuit.

The jurisdictional statement

I filed this action pursuant to United States Statutes, in the U.S. District Court, on October 05, 1999, in the U. S. District Court - Southern District of New York; against all the defendants named in the action, for multiple Frauds, Extortion and Obstruction of Justice under **Title 42** for **Civil Rights** Violations and **Title 18** for **RICO** violations by all the defendants,

All the defendants are represented by a single counsel and the counsel moved under **FRCP Rule 12**, for dismissal of the matter. The counsel offered the entire Complaint in the MacCartney matter [**CA2NY Docket No. 00-7090**] as his principal Exhibit. Only the counsel should explain the reasons for this step.

After an initial conference, on Feb. 29, 2000 and my submitting detailed responses, in opposition; pursuant to the "guidelines of the Court" and the FRCP Rules; the district court dismissed all of my claims; by an order dated April 29, 2000. The clerk of the District Court of entered a judgment on May 03, 2000.

This appeal is taken from each and every part of the final decision, order and judgment entered in the District Court in this matter.

Statement of issues presented for review

1) I have presented my claims, pursuant to the applicable Statutes and Rules and request reversal of the District Court Judgement, in

it's entirety, reinstate all my claims, for conclusion by a Trial before impartial Jury, presided by an impartial Judge, with complete protection of Law Of The Land.

2) Do the attorneys engaged in Law Practice ***have immunity***, protection or waiver under the laws and constitution of the United States.

A) That permits them to perpetrate misconduct during the course of a judicial proceedings in this jurisdiction and further

B) That permits the attorneys to escape from "application of laws, rules and regulations" to their misconduct; wherein they do not have to answer to anyone, in Civil Litigation and further

C) Permits such [in A & B above] attorneys to "inflict damages" to the rights and property of other individuals with impunity and not have to stand trial in a Civil Action; before an impartial jury, in a Federal court and further

D) Is it proper for the State or Federal Courts to "impliedly or implicitly" grant protection-to attorneys, that is explicitly not provided by Constitution or the laws ?

3) Is it proper for a Judge, either in the State Courts or in the Federal Court to ignore the mandates and intentions of the U. S. Congress, The Federal Statutes, the rulings \decisions of the U. S. Supreme Court and *railroad* a litigant ?

4) Has there been explicit directives or intentions expressed by the U. S. Congress, that permits:

A The counsels and litigants to engage in "predatory Motion practice", using the FRCP Rules, to effectively destroy party's claims ?

B Anyone [counsels or judges] to mis-state, mislead, misconstrue, contaminate and corrupt the Judicial record to accomplish the goal of destroying any litigant, under the guise of representing any litigants and\or adjudicating any case ?

Statement of the case.

This case arises out of the defendants knowingly perpetrating multiple frauds, extorting and depriving me of my rights and property, during a N. Y. State judicial proceedings these Federal defendants filed in Rockland County against me. Beginning in Sept. 1994. R&R counsels made false statements, in their verified complaints, affirmations; procured and induced others to procure fabricated evidence from it's principals [HI] employees and\or officials; used the fabricated evidentiary documents, in the Rockland Action; influenced the Rockland County Justice Rudolph and eventually obtained a judgement, by frauds, against me.

During the ensuing motion practice, the Federal defendants commenced in Rockland Court; and in response to which, I opposed their presentation. Defendants prevailed upon Justice Rudolph sufficiently enough to influence him to issue a decision and order, in favor of their principals, Federal Defendants.

All the defendants engaged and induced others to engage in conspiratorial acts, in the eventual and successful multiple frauds by using Interstate Telephone Systems, thereby violating **18 USCS 1343,** U. S. Mail and Private Mail Carriers, violating **18 USCS 1341.** All of which interfered with my Constitutionally protected rights, defrauded me of equal protection of laws, guaranteed by the New York State as well as U. S. Constitutions; knowingly abused the State judicial process, in Rockland County, NY.; in total contradiction and violations of the State and U. S. Constitution and Laws; to deprive me of my rights as well as my property.

The defendants violated numerous NYS Penal, Banking, General Obligation and Business Laws; in the process; all of which have been identified and referred to in detail in the Motion practice.

The defendants deprived me of "my rights and access to my property" and in doing so inflicted heavy losses upon me. The defendants obtained "judgement by Fraud" for their clients.

I filed this action, against the individuals and entities, named in the Summons and Complaint, who have been responsible to cause damages to my rights and property, pursuant to **42 USCS 1981; 42 USCS 1983; 42 USCS 1985** as well as under **18 USCS 1961,** ***et seq;*** upon my finding and understanding the **"mechanism of their fraud"**, in order to state my claims under the Federal Rules Of Civil Procedures. The defendants also violated **18 USCS 1512,** ***et seq;*** and **18 USCS 1951.**

The misconduct of all the defendants is so "serious, pervasive, calculated, reckless, reprehensible and uncivilized and demonstrating their contempt for the Laws and the U. S.

Constitution", that, each of them *can also be charged* under **18 USCS 241, 18 USCS 242 and 18 USCS 245.**

I have also shown, that the HI defendants, violated **12 USCS 1464, 12 CFR 500** *et seq and* **15 USCS 41**, *et seq*. During the course of conducting their business and such violations, in fact gave rise to the situations of their conducting transactions, which have been the principal aspects of this litigation.

My complaint contains, Statement Of Facts [chronological statement of events describing over 20 major and some minor transactions]; Conspiracy to Defraud- that alleges actions of the defendants engaging in conspiracies; Principles and Basis of Civil Rights-outlining the-Statutory and Decisional base of my claims; Criminal Conduct of CD-outlining the criminality in the defendant's multiple transactions and RICO; outlining the elements required constituting RICO claims-including clear allegations of each defendants violations. In addition to which, a "Formal Complaint" of 16 counts, against all the defendants, brings together the "essential elements of all of the above sections" with demands for relief. I have also attached part of the "State Proceeding" as Exhibits, with the complaint, that was filed and served, on all defendants.

Summons and complaints were filed and served on the defendants, pursuant to the FRCP Rules; the defendants, appearing through their counsel moved to dismiss the action pursuant to **FRCP Rule 12** to which I submitted my opposition with additional affidavit, exhibits and request for amendment [**FRCP Rule 15**]to complaint [adding more material] but the District Court granted the defendant's motions and dismissed the case.

District Court stayed all discoveries and none was conducted.

This action is a "COMPLEX LITIGATION".

I did not make any of the rules. I asked for enforcement, from the persons entrusted with the requisite authority.

Justice Rudolph of Rockland County refused to " discharge his constitutional duty" and so the USDJ Hon. Colleen McMahon, refused to discharge her constitutional duty and *enforce the applicable Federal laws*".

Defendant's counsel attached the entire complaint MacCartney matter as his exhibit.

Under the Circumstances, I am referring to my Appendix, Brief and the Reply Brief, in the MacCartney matter [USCA Docket No. 00-7090], by incorporation in this brief.

Action against Rubin & Rothman, various individual counsels and Businesses under Household Names

The defendant counsels used "falsely sworn affidavits of others "and falsely swore their own affirmations, actively caused to procure and submit perjurious affidavits, fabricated evidence, in Rockland County Judicial Proceedings [hereinafter RCJP]. Def. Counsel's actions have been fully supported and assisted by their principals, [The HI Companies] solely for pecuniary benefits, no matter what the laws "required of them". **That is the CRUX of my federal complaint.** All the statutory violations of defendants have been "briefed". **ALL OF THIS IS DOCUMENTED.**

Def. Household Bank FSB's "legal" presence was in Illinois only.

Household Bank FSB (HB-FSB), exists and must conduct all

it's business, subject to **12 USCS 1464** as well as pursuant to **12 CFR 500** *et seq*. Defendant [HB-FSB; HI and it's subsidiaries] business is further subject to the limitations in **15 USCS 41**, *et seq*.. The HI defendants are also subject to monitoring by the Office Of Thrift Supervision; a body within the U. S. Dept. Of Treasury. These statutes and regulations prohibited HI from doing any business outside Illinois and certainly not in New York, in the manner "did engage in". This matter has been briefed in minute detail, in the USDC motion practice.

Def. Household International and it's subsidiaries exploited New York Courts, by "recklessly making claims", it considered necessary to "gain entry" in New York State Courts, including those to the effect that, HI subsidiaries had\have authority to transact business in New York; evinced by Exhibits P-05, P-37, P-46, P-47, P-48, P-49, P-57, P-58, P-59, P-60, P-61, P-62, P-63 and P-64.This EVIDENCE reflects upon the "total and reckless disregard" HB-FSB" have shown to the New York State, in the abuse of the State resources.

The documentary evidence provided in (in above para) this action (including that submitted in the Motion practice) show, that, not only various HI counsels filed numerous actions in New York Courts, as each of them pleased; but in fact HI "could not care at all, as to whatever claims, it's counsel made" while filing "the HI authorised" Judicial proceedings; as long as "the actions" resulted in Monetary gains, for HI and it's subsidiaries. It is a fact that, in this manner HI " abused N. Y. State Courts", in violation of N. Y. Business Law, NY Penal Laws, Banking Laws, General Obligation Laws and the NY Constitution.

The evidence shows, that, Def. HI are brazen, uncontrite, recalcitrant and demonstrate their moral turpitude, in the

conduct of their business affairs. HI and it's agent's [attorneys] conduct is reprehensible and is perfectly described by the words "scams, scienter and similar adjectives".

In fact the HI defendant's very act of sending the "unsolicited Checks" under the name of HFC Cash Reserve { that is synonymous with one of their own subsidiary Household Finance Corporation-commonly known as HFC ..[see P 11] } is violation of **15 USCS 1125**, that prohibits use of "false descriptions"; that did result in "likelihood of confusion" as determined by this Court in *Western Pub. Co., Inc. v Rose Art Industries, Inc.* 910 F. 2d 57 [1990]; that is very clear from the Decision and order of Justice Rudolph [P-16]. and which is also "actual confusion" of the Rockland Court, as this Court observed in *The Sports Authority, Inc. v. Prime Hospitality Corp.* 89 F.3d 955 [1996]. This Court recognized the "facial falsity" in *Johnson & Johnson v GAC Intern. Inc*,. 862 F 2d 975 CA2 (NY)(1988).

The HI and it's subsidiaries were also conducting their business in complete violation of **12 USCS 1467a[c] (1)(A)** .. *Prohibited Activities*.. That reads as follows:

> "engage in any activity or render any service for on behalf of a saving association subsidiary for the purpose or with the effect of evading any law or regulation applicable to such saving and loan association;"...
>
> and the HI defendants continued the activities in violation of **12 USCS 1467a[c] (1)(C)**. As can be seen in Sofact paras 150, 151 & 152.

39 USCS 3009 and Household Bank FSB

I have discussed this issue, at length, in the District Court motion practice and demonstrated that, HI used it's "other"subsidiaries to transact "some" business, *for HI* that HI is "prohibited" by **12 USCS 1464, 12 CFR 500** *et seq and* **15 USCS 41**, *et seq*, to transact through HB-FSB.

In any event, the principal objective of 39 USCA 3009 is defined in the statutory text, in.... section (a) .....violation of this section constitutes an unfair method of competition and an unfair trade practice in violation of section **45(a)(1) of title 15.**

Household Bank FSB.....engaged in unlawful collection of funds, from various people in New York State

In the process, described above, pattern establishes showing HI engaged in activities of extortionate transactions, in violations of **18 USCS 1951** and **18 USCS 1952** and violated **18 USCS 1341** and **18 USCS 1343**. This matter has also been "briefed" fully well in the DC Motion practice. The other actions by the R&R counsels as well as the "other counsels" shown through Exhibits P-57 to P-64; "solidifies" my claims, that the " HI business was nothing but fraud" at every stage.

Reading ONLY the USDC order and decision must mislead anyone, that, all the defendants are innocent and are facing "unnecessary and unreasonable" Federal proceeding, in USDC. *The facts are otherwise.*

In view of the "MULTIPLE TRANSACTIONS" relating to the defendant's misconduct, I have repeated them, briefly herein. All of the transactions have been detailed in the SOFACT as well as in the Motion practice. The ***"allegations"*** are supported by Exhibits and more details and

Exhibits have been submitted in the Motion Practice, in USDC., that is part of the Record in this Court.

The USDC wrongfully, stricken my Sofact paras 136-147, along with the applicable Exhibits, under FRCP Rule 12(f). More is discussed in the analysis of the Decision.

Defendant Robin Long

Transaction 1: Def. Robin Long prepared, filed and served 1) **original complaint** [Exhibit P-05] and "certified", through her "verification" that, there exists a "corporate entity, by the name of HFC Cash Reserve (a total fabrication), under penalty of perjury.

Transaction 2: Thereafter, Robin Long mailed, a copy of the "same" complaint to AK, through US Mail, prior to filing her "Motion For Summary Judgement".

Transaction 3: Robin Long engaged Interstate Telephone System as well as U.S. Mail or other private carriers, to obtain a false affidavit from Debra Shepherd, located in the State Of Virginia, employed by one of the entities of HI.

Transaction 4: Robin Long, prepared and served an affirmation, under penalty of perjury [Ex P-07], along with affidavit of Debra Shepherd, that claimed, plaintiff [HFC Cash Reserve, Div. Of HB-FSB] employing her as recovery specialist; upon AK by US Mail.

Transaction 5: Robin Long also offered a "alleged Cash Reserve Agreement" [P-06], that was *"fabricated"* to make it appear as a single document.

Transaction 6: Thereafter, Robin Long filed the "fraudulent and fabricated papers" in Rockland County

Court" with her own affirmation and used U. S. Mail.

Transaction 7 Plus ..... Robin Long Filed a "falsely verified complaint" against Carol Campbell Exhibit P-37, dated Jan. 16, 1995; in Rockland County Court, that generated another Fraudulent Judgement, in that action. The same was served upon the defendant carol Campbell and those are other related transactions, through US Mail.

Transaction 8 plus.... Robin Long Filed a "falsely verified complaint" against Michael Fischer, as seen in Exhibit P-48, dated June 16, 1994; in Dutches County Court.

Def. Joseph Latona

Transaction 09: Joseph Latona *served* his affirmation, dated May 22, 1995 [P-14], along with "false papers-prepared by Robin Long [P-05, P-06 and P-07]" and promoted their substance "as true and accurate", upon AK, *through US Mail.*

Transaction 10: Joseph Latona *filed* his affirmation, dated May 22, 1995 [P-14], along with "false papers-prepared by Robin Long" and promoted their substance "as true and accurate", in Rockland Court, *through US Mail.* In the same affirmation, Joseph Latona implored Justice Rudolph, to deny any hearing and or trial, AK requested, in his affidavits.

Transactions 11 plus: Def. Joseph Latona engaged in numerous Telephone conversations, with HB-FSB officials, subsequent to his "assuming responsibility, to handle the file-that was subsequent to removal of Robin Long" in the early part of May 1995, to perpetuate the frauds underway..

Transaction 12: Def. Joseph Latona received RCJP decision [P-16], favoring HB-FSB, through US mail, based upon

"fraudulent papers" R&R had submitted, since commencement of the Rockland action.

Transaction 13: Def. Joseph Latona prepared and mailed "Judgement", dated Sept. 15, 1995 to the Rockland County Clerk's office, based upon the RJCP decision, that was obtained by fraud.

Transaction 14: Def. Joseph Latona received the "conformed" Judgement, from Rockland County Clerk's office.

Transaction 15: Def. Joseph Latona, served a "conformed" copy of Judgement [P-18], upon AK, through US Mail, on Oct. 11, 1995.

Transaction 17: Def. Joseph Latona served and filed another "affirmation" dated Nov. 03, 1995, by US Mail, affirming that he obtained the judgement, without malice and in conformance with the laws.

Transaction 18 plus: Def. Joseph Latona, upon receipt of AK's OSC [through US Mail, on or about March 07, 1996]- to vacate the Rockland judgement, communicated with numerous HB-FSB officials by interstate telephone systems and sent papers and material through US Mail as well as private mail carriers, in furtherance of defendant's conspiracy, to develop documents, to oppose AK's OSC.

Transaction 19 plus: Def. Joseph Latona, communicated with HB-FSB officials, at Virginia Beach, VA by interstate telephone systems and sent papers and material through US Mail as well as private mail carriers, in furtherance of defendant's conspiracy, to develop documents, to oppose AK's OSC; to obtain another fraudulent affidavit-of Valerie Melvin.

Transaction 20 : Def. Joseph Latona, communicated with Valerie Melvin, at Virginia Beach, VA by interstate telephone systems, discussed substance of her affidavit and asked her to sign the affidavit, upon receipt, before a Notary and return the same to him.

Transaction 21 : Def. Joseph Latona prepared and sent an affidavit, containing "fabricated and fraudulent" information, in the name of Valerie Melvin and sent it to Valerie Melvin through US Mail and\or through a private mail carriers, in furtherance of defendant's conspiracy, to develop documents, to oppose AK's OSC..

Transaction 22 : Def. Joseph Latona received an affidavit, containing fabricated and fraudulent information, of Valerie Melvin, who signed before a VA Notary on March 13, 1996 and returned it to him, [Joseph Latona]through US Mail and\or through a private mail carriers, in furtherance of defendant's conspiracy, to develop documents, to oppose AK's OSC..

Transaction 23 : Def. Joseph Latona, used the Valerie Melvin affidavit [P-36] and prepared his own affirmation dated March 15, 1996.

Transaction 24 : Def. Joseph Latona, thereafter but before March 26, 1996, served the Valerie Melvin affidavit along with his affirmations upon AK, through US Mail, to oppose AK's OSC.

Transaction 25 : Def. Joseph Latona, thereafter but before March 26, 1996, filed the Valerie Melvin affidavit along with his affirmations through US Mail, in Rockland County Court, to oppose AK's OSC..

Transaction 26 : Def. Joseph Latona, served his *"Sur*

Reply", dated April 16, 1996, through US Mail; in response to AK's affidavit in support of the OSC and kept on promoting *"truth"* in his Court papers.

Transaction 27 : Def. Joseph Latona, filed his "Sur Reply", dated April 16, 1996, through US Mail, in RCJP; in response to AK's affidavit in support of the OSC..

Transaction 28 : Def. Joseph Latona prepared a Summons and Verified Complaint, April 27, 1996, containing false information, against Louis F. Cruz and Pilar Cruz; caused it to be filed in Westchester County Court and had it served upon the defendant therein.

Transaction 29 : Def. Joseph Latona prepared a Summons and Verified Complaint, dated Oct.07, 1995 containing false information, against Robert P. Tocco and caused it to be filed in Westchester County Court and had it served upon the defendant therein.

Transaction 30 : Def. Joseph Latona signed a Judgement, dated June .17, 1996 obtained through frauds against Robert P. Tocco and caused it to be filed in Westchester County Clerk's office and then had it served upon the defendant therein.

Transaction 31 : Def. Joseph Latona prepared a Summons and Verified Complaint, dated May 13, 1996; containing false information, against this plaintiff-Appellant [AK], **in the name of HRS** and caused it to be filed in Rockland County Court.

Transaction 32 : Def. Joseph Latona caused the Summons and Verified Complaint, dated May 13, 1996, to be served upon this plaintiff-Appellant [AK], in the name of HRS . [transaction 31 above]

Transaction 33 : Def. Joseph Latona received this plaintiff-Appellant's [AK] answer with counterclaim and in response served a "verified reply" upon AK, through US Mail, dated July 09, 1996.

Transaction 34 : Def. Joseph Latona, in response to AK's demand for "verified Bill of Particulars"; Joseph Latona served his response, dated Oct. 08, 1996; that contradicts verified complaint [transactions 31& 32 above], through US Mail.

Transaction 35 : Def. Joseph Latona, in response to AK's demand for "verified Bill of Particulars" served his response, dated Oct. 08, 1996, with his verification dated Oct. 31, 1996; that totally contradicts the verified complaint [transactions 30 & 31 above], through US Mail. His own two contradictory verifications serve to conclusively demonstrate the fraud.

Def. Keith Rothman

Transaction 36: Keith Rothman of R&R served, information subpoenae; one each on Chemical Bank and Bank Of New York, [P-20] dated Oct. 17, 1995; pertaining to the Judgement R&R obtained for HB-FSB. Keith Rothman, is a principal in Rubin & Rothman.

Being a "principal" in Rubin & Rothman; he is accountable for each and every act of Robin Long and then of Joseph Latona. Keith Rothman permitted to use the "methods" of Robin Long and Joseph Latona to be used, ad nauseam.

Def. Scott Rumph

Transaction 37: Scott Rumph, prepared and signed a Judgement, against Carol Campbell on May 12, 1995 and

sent it to The Rockland County Clerk's office.

Rubin & Rothman

Transaction 16: R&R notified AK, through their letter of Oct. 10, 1995; that they obtained a Judgement for HB-FSB.

The above list does not include, the R&R defendants receiving my responses through US Mail; which also contribute to the list of their Mail Fraud Violations. They have received at least 25 responses from me.

All of the above cited 38 plus transactions were perpetrated, in the name of and for the benefit of Rubin & Rothman and of course, for their principals.

Majority of the above transactions, primarily relate to **1)** defendants obtaining one judgement against me [using every possible fraud] **2)** my proceeding to reverse that judgement **3)** defendants filing another action with falsely sworn papers.

This firm, R&R engaged in business as "Debt Collector" is not a "law firm" **in true sense**, even though it's principals and employees, partners or officers Keith Rothman, Joseph Latona, Robin Long and Scott Rumph have been admitted to practice law, in New York Courts. Rubin & Rothman, thrives on "illegally conducted" debt recovery business. It must be borne in mind that, R&R opened, an average of 8,000 file, every year, between 1994 and 1996. This Court would certainly understand, who can have that many files.

Criminal Conduct Of Defendants Violating N. Y. Penal Codes

Defendants "recklessly made and had other make, "false statements" under OATH, which constitute perjuries, in

affirmations, affidavits and judgement violated **NYS Penal Code** *sections* 210.05; 210.10; 210.15, 210.20; 210.35 ; 210.40; 210.45(**Perjury**); (Exhibits P- 05, 06, 07, 14, 18, 36, 39,).

In the process of "preparing, executing" those papers, defendants violated **N. Y. S Penal Code** *sections* 105.00; 105.05; 105.10; 105.13; 105.15; 105.17 (**Conspiracy**); defendants engaged in "evidence fabrication" [**Debra Shepherd and Valerie Melvin Affidavits** and "reproducing [creating] Cash Reserve agreement" from two pieces of papers violating NYS Penal Code sections 215.35; 215.40 (**Tampering with physical Evidence**); that resulted in violation of NYS Penal Code section 215.40 (**Falsifying business record**).

Then the defendants filed the papers in RCJP, in violation of **N. Y. S. Penal Code** *sections* 175.05; 175.10; 175.15; 215.35 (**Filing false papers**); That further caused, defendant to violate. **N. Y. Penal Law** sections 190.50 (**unlawful collection practices**) and; and **NYS Penal Code** section 215.45 (**Compounding crime**); thereby giving rise to violations under sections 460.20 (**Racketeering**). **These are all N. Y. State Felonies and Misdemeanors,** (identified in detail, for their Severity" in Criminal CD section Page 8, Para 25 j to 25 m [on page 9])

Defendants by their active misconduct, detailed heretofore, also violated N. Y. state statutes (Penal Code) 195.05 and 195-07; **obstructing Governmental Administration** in the second degree, has been made a part of the "Criminal Conduct" section, in para 24 e) on page 7.

Article 70 of NYS Penal Code states:

Violation of sections 105.15 and 460.20 are **"B" Class**

felonies and earn 25 years, upon conviction for each count

Section **Sentence on conviction- each count**

105.13 ,210.15 = **"D" Class felonies,** earn 7 years

105.10, 175.10, 175.35, 190.65, 195.07,
210.10, 210.40, 215.15 = **"E" Class felonies;** earn 4 years,

105.05, 175.05, 190.60, 195.00, 210.05, 210.35,
210.45 and 215.45 **are "A" Misdemeanors.**

In view of the Fac HI and it's subsidiaries, actively encouraged, assisted, supervised the R&R judicial filings against AK and took each and every step, with definitive objective of deriving every kind of pecuniary benefit, the HI defendants have aided and abated and did engage in INTERSTATE transactions to accomplish their objective, the HI defendants are also "subject to the NYS Penal statutory violations cited above".

The Defendants violated several Civil and Penal Federal statutes

The above violations consequently "trigger" violations of **18 USCS 1961 (1) (A).**

In view of the fact, the defendants used U. S. Mail in the entire scheme, as demonstrated in detail, that "triggered" violations of **18 USCS 1341.** Defendants using Interstate Telephone Systems in the entire scheme, causes violations of **18 USCS 1343.** Defendant's "impeding in the State Judicial proceedings, fabricating evidence, evading legal process to call witnesses, withholding testimony of witnesses and tampering with witnesses and\or victim causes them to

violate **18 USCS 1512** *et seq.* and also violated **18 USCS 1951.** All of these trigger multiple violations of **1961 (1) (B).**

In the process of their efforts, to collect "debt", for HI, each defendant also violated **15 USCS 1692** et seq. and specifically violating **15 USCS 1692e(2)(A).; 15 USCS 1692f(1).; 15 USCS 1692i(2)(A);** in filing, serving and mailing the above identified documents. It is immaterial, whether I am entitled to claim any damages or not, but the defendant's "conduct" must be judged, by an applicable statute.

Analysis of R&R Defendant's principal acts

Robin Long's transactions No. 1 to 6, described briefly above and "detailed in the Motion practice" relate to her *falsely sworn complaint* [P-5], *falsely induced and procured* affidavit of Debra Shepherd [P-6] and then her *own affirmation proffering and promoting* false affidavit of Debra Shepherd [P-7], submitted with the Motion for Summary Judgement.

All of the activity of Robin Long engage with "sole objectives" to secure a "judgement" favoring the R&R client, as a matter "of course", custom and practice developed over a long period of time.

Robin Long "dropped out of the picture" as soon as my "Cross Motion" reached R&R. None of the R&R counsels ever expected any "unrepresented defendants" to even prepare a "single piece of paper in opposition'. I was demanding "production: of Debra Shepherd, in Court.

The above acts and transactions caused violations of numerous NYS Penal Codes [detailed in Motion practice] and hereunder, at the end of the analysis as well as causing

violations of numerous Federal statutes under **Title 18** and **Title 42.**

Upon Robin Long's departure from the picture Def. Joseph Latona entered the picture.

Def. Joseph Latona's activities are described in Transactions No. 09 to 27 and 31 to 35.

Mr. Latona, in essence offered a "spirited offense" and "supplemented it with his own affirmation" further "assuring" Rudolph J. that he was the "Prince on White Horse". Pure as driven snow, Pius and virtuous, since he was the "Attorney admitted to practice Law" in New York Courts.

Def. Latona's "success" [P-14] to convince Justice Rudolph to... "

1) not to conduct any hearing in open Court,

2) not to call any witness by directing Def. Latona to produce Debra Shepherd (since she was beyond the states physical boundaries, for me to subpoena her).

3) wherein R&R counsels [Robin Long and Joseph Latona], *repeatedly pleaded with Justice Rudolph to "accept the Shepherd affidavit* as "the absolute truth", in their own affirmation,

as a result of which

4) Justice Rudolph, did INDEED rely, on the submitted affidavit and other "so called business record" to grant his order [P-16] and Rudolph J.

accepted each and every statement in Debra Shepherd's affidavit as "absolute truth". [Of course, unless one is willing to read the P-16, one would never understand as to what it is.]

5) **Justice Rudolph's "that reliance"** on the affidavits of Debra Shepherd and both the defendant counsel's affirmations [guarantee to the Court - by a member of the bar] has been "detrimental to me".

6) Which in turn resulted in the "judgement" that remained on the record, of the Rockland County Clerk's office, till the 7th of May 1996 [P-41].

7) Justice Rudolph accepted the "proffered" support as "business record" [CPLR 4518] and the *affidavit based upon Debra Shepherd's personal knowledge, without any ANY question.*

8) The Court order [P-16] in turn, refers to HFC as the same as HB-FSB *(in the first para itself)* resulted in favorable order and decision. [P-16].

All of this has been part of my Federal Complaint and properly Exhibited. Notwithstanding the FACTS, which include the Exhibits themselves, signed by the counsels... USDC dismissed my complaint.

Following is the analysis of the USDC decision and order.

I am reproducing the USDC decision portions, to appropriately respond, in this appeal.

1) "In this first action, Kashelkar sued the judge", [USDC-Decision & Order- P-1\Para 1\Line 2-3] This refers to my action against MacCartney et al, USCA

Doket No. 00-7090. **This statement is factually "wrong",** misleading and corrupts the Court record. Rockland County Judge Meehan is not a named defendant, anywhere, in any action, I filed.

I would like *to identify* J. Meehan [in MacCartney action] as an "unnamed [in the Federal action] co-conspirator"... This should be quite possible, since Watergate Special Counsel Leon Jaworski considered but could not indict Late President Richard Nixon and hence he was "termed" as.. "unindicted co-conspirator".. I am certain, that members of this Court are aware of that situation.

2) "Defendant's first sin was to sue Kashelkar to recover money he had borrowed from Household Bank under a line of credit. [Household action No. 1]". **[USDC-Decision &Order- P-1\Para 2\Line 4-5]**

This "issue" has been analysed and briefed in my "motion practice" in USDC, including the fact, that, there was "no contract" between HI defendants and myself.

I never "borrowed" any money from HB-FSB. I received an "unsolicited check, in the mail, for $ 1,500.00; that was in violation of **39 USCS 3009**, as a part of the HI defendant's operating their business in violation of **12 USCS 1464** *et seq*, **12 CFR 500** *et seq; and* **15 USCS 41**, *et seq*.**15 USCS 1125** *et seq*. **12 USCS 1467** *et seq*.

Not only that, but while filing that "suit" [RCJP] Robin Long and consequently Rubin & Rothman violated the above listed NYS Penal statutes and NYS Banking Law sections 669 and 671 [penal violations], briefed on page 16 of my USDC motion-law memo.

3) "Their second sin was to make a pleading error in that case, naming a banking product, rather than the lending institution itself'. **[USDC-Decision &Order- P-1\Para 2\Line 6-7]**

This is not just an error, in any letters or correspondence but it is reflected in "verified complaint" [P-05] "signed under oath" that is "riddled" with "penal violations" cited before in item 2 above.

4) "Their third was to have a misfortune to purchase a credit card debt that Kashelkar owed to Chemical Bank and to bring a suit to recover those funds."[**USDC-Decision &Order- P-1\Para 2\Line 8-10]**

The USDJ knows nothing more than Exhibits Defendants attached. Therefore, the basic problems arising out of Chemical Bank's mishandling my account, is not reflected, anywhere in any papers, that USDJ could have seen.

Under the circumstances, the "sweeping conclusions" relating to my "Chemical Bank Account" , in the USDC decision and order are "nothing but wild speculations". Therefore, USDC conclusion is " **factually "unsupported",** misleading and corrupts the Court record.

5) "They knew not with whom they were dealing." [**USDC-Decision &Order- P-1\Para 2\ Line 10-11.]**

I certainly do not read **this** *"comment" with pleasure and* as a complement to me but lodge my "strong" protest at each and every word, in the above remark..

At least, I have shown the "fortitude" to stand up for my rights. I am absolutely happy that I can at least make an efforts to "stand for my rights". There are other hundred of

thousands, either represented by counsels or otherwise, who have to be told or they found that the "Court denied your [their] case."

No one came to save **Carol Campbell** [P-37]. Whoever was the Judge in Rockland, that granted and signed the decision, for a Summary Judgement in favor of R&R and the HI; obviously did not bother to question the "veracity" of the complaint and or the affidavits and\or any other "proof" that R&R submitted [The Judge has the responsibility].

Carol Campbell, probably may have had a valid defense under the sections relating to Federal Fair Debt Collection Practice Act under **15 USCS 1600** *et seq*. And specifically those under **15 USCS 1692** *et seq*.

I was not aware of that law, at that time. Had I known that, I would have pleaded it. Justice Rudolph, who has the responsibility to take "Judicial Notice" under CPLR 4511, did not bother about **15 USCS 1600** *et seq*.; while granting the SJ Motion of R&R against me. He did not want to bother.

For that reason, I want to call him "in Federal Trial" to question about the "customs and practice" in State Courts, those "ignore attorney's misconduct".

This USDC decision does not serve the "cause of justice", It is "injudicious", is written by a person, whose "temperament and MOTIVE of writing such words" is NOW being questioned.

Such "words" show contempt and condescending attitude towards the person [That is this appellant\plaintiff] to whom the remarks apply and then who becomes a "victim" the second time around, of the "injudicious decision". The words are written with intent to humiliate me, for each and every

reason known to the writer.

USDJ McMahon, holding and swaying "judicial power" over the others, she derived out of the U. S. Constitution, that she "vowed to uphold" as a Judge- appointed for LIFETIME- is demeaning the cause of Justice in this jurisdiction.

Judge McMahon, through her remark, has offered the VERY proof to my statement, that, some persons [mostly the Euro-Centric Caucasians] have"deeply imbedded hatred towards non-whites."

Therefore, I PROTEST the above "remark" as totally prejudicial, hostile and discriminatory towards me, ON THE PART OF USDJ Hon. McMAHON.

6) "because he's a member of a minority group. [South Asian ancestry]"**[USDC-Decision &Order- P-2\Para 1\Line 4-5]**

I have never claimed, that, this [statement in item 6] was the sole reason, the HI defendants sued me but that, HI have particularly directed their "illegal business activities" towards the "minority groups" in the US. Those "illegalities" have already been cited *ad nauseam* and I need not repeat them here.

7) "that the naming of the wrong entity as the party plaintiff in Household Action No. 1 constitutes a RICO violation of frauds; and that the Rubin & Rothman defendants conspired with a state judge (again)"....**[USDC-Decision &Order- P-2\Para 2\Line 5-7]**

This is another "figment of USDJ imagination". My complaint is based upon "multiple frauds" and not

negligence. The pleading mistake were not "inadvertent". They were "full of reckless disregard". I have repeatedly stated that. It is necessary to "read my papers" to understand them.

May I respectfully refer to, the USDJ statement in the Transcript of "Oral Arguments" dated Nov. 05, 1999; in the record of MacCartney case [USCA Docket No. 00-7090]" Appendix Page 40 and my comments in my affidavit- Appendix page 18, para 29, to the effect, that, McMahon J. read only the defendant's papers.

Since, Hon. J. McMahon did not "cite" anything from my arguments, laws and Exhibits [already analyzed in detail], I would suggest that, Hon. McMahon J.; did not read my complaint, motion practice and did not pay attention to it.

8) "As these claims are no more substantial than the claims asserted in plaintiff 's prior action, for the reasons articulated by Defenders in their memorandum of law, the present claims, too, are dismissed with prejudice."**[USDC-Decision &Order- P-2\Para 2\Line 8-10]**

In view of the Fact, USDC has based every assertion and assumption on the **"prior action" [MacCartney... case]**; it is axiomatic that, each and every facet, that affected the Judgement in MacCartney case, is affecting this case.

May I refer to the MacCartney case Appendix Page 18, para 32 of my affidavit and the reference to Tr. Of Or Arg Pg 15- lines 3-7; wherein USDJ has referred to "several cases and 16 boxes" full of papers. I would suggest, those "papers have "crept" in this decision".

9) "[p]laintiff received a conditional check in the mail from Household Bank.."**[USDC-Decision &Order-P-2\Para 2\Line 4-5]**

This statement is subject to the same analysis as the item no, 2 above. The check from HI, mailed by US Postal Service, was in "absolute" violations of several Federal Statutes and even the State statutes.

10) "Household Bank's offer to open an HFC Cash Reserve Account".**[USDC-Decision &Order- P-3\Para 3\Line 2-3]**

This conclusion is equally not supported in the record and is subject to same questions as item No. 2 and No. 8, above.

11) "Household Bank then served a complaint signed by Robin long,"..... **[USDC-Decision &Order- P-3\Para 4\Line 6-7]**.

The defendants violated numerous State and Federal Penal and Civil Statutes, identified in this brief as well as those cited in the Memo of Law, submitted in Motion practice.

The USDC failed and refused to follow, the Federal Statutes and the U. S. Supreme Court decisions, before arriving at this decision-under appeal.

12) "Plaintiff contends that service of this motion constituted a violation of his right to trial"**[USDC-Decision &Order- P-3\Para 5\Line 3-4]**.

Another "totally wrong and misleading" statement in the USDC decision. I have claimed, ad nauseam, that, the **"fraudulently procured fabricated affidavits and fabricated exhibits" by the R&R counsel,** gave rise to my

demand to "question the veracity" of the evidence. Def. Long's and Latona's "affirmations, made under penalty of perjury" swayed Rudolph J.

How can USDC say, that, I cannot question the veracity of evidence ? Is that not a Rule Of Trial ? How can I properly question that, without confrontation, in open Court ?

J. Rudolph, accepted the "R&R" presentation and granted decision. That decision was "procured by fraudulent methods". NYS and US Penal Codes were violated during the process.That "forms the basis of my action" and **NOT WHAT USDC WRITES IN IT'S DECISION.**

13) "On August 24, 1995, Justice Rudolph granted Household Banks summary judgement motion and denied Plaintiff's cross motion."**[USDC-Decision &Order- P-3\Para 5 \Line 6-7]** .

USDC has failed to "cite the reasons, my cross motion was denied". It was denied, because, I could not "produce sufficient and convincing proof, to oppose the SJ. Motion." I offered, whatever "proof" was available and even though I questioned Debra Shepherd's affidavit, at length, cited the NYS Banking laws sections; J. Rudolph could not care less. He granted his decision anyway.

14) "Plaintiff claims that from April-June 1995, he was virtually precluded from working because he was devoting so much time to litigating the $ 3,200.00 action with the Household Bank."**[USDC-Decision &Order- P-4\Para 2\Line 1-2]**

This statement is partially correct but misleading. It was not only that, I was defending a $ 3,200.00 law suit but that, I was acting to "protect my property and rights". That work,

did not end, till I secured an order to vacate the Judgement, by the order of J. Rudolph.[P-41].

USDC believes that, I should have been a victim, like carol Campbell [P-37].

Since, this is not a place to "offer the proof of my losses and damages" I would reserve the matter to a date in the future.

15) "On March 06, 1996, Plaintiff filed an order to show cause or motion to vacate the judgment, on the grounds that the complaint had incorrectly named the plaintiff in the state court action."**[USDC-Decision &Order- P-4\Para 4\Line 1-3]**

This statement is also wrong. I had also claimed, that, the R&R counsel used "fabricated evidence and false affidavits and affirmations" and demanded damages under **NYS CPLR 8303-a.** J. Rudolph, not just refused to award me the damages but refused to even acknowledge in the decision that, the R&R counsel used "fabricated evidence and falsified affidavits and affirmations.

16) "Because of an error in communication between Household Bank and Rubin & Rothman,"...**[USDC-Decision &Order- P-4\Para 4\Line 3-4]**.

There was no "error" in communication. A letter or "Legal Action Advice" from John Frankovitch, of HFC Processing Services in Elmhurst Illinois, in his notification to Rubin & Rothman, dated July 13, 1994; has clearly indicated that action should be filed in the name of "Household Bank FSB-HFC Cash Reserve". This is a part of my Exhibit No. P-36.

Def. Joseph Latona "supplied it" with his affirmation [P-36]

and has referred to in para 4 of his affirmation as his Exhibit "B".

The name, as given, for action is imprinted by a "RUBBER STAMP". That would mean, that, the Rubber Stamp was used, very often. Look how "poor" is the impression.

The same "notice" also *"crossed out"* Garnish Bank Account. Nevertheless, the R&R counsels acted contrary to their client's instruction, in this respect. Please see my exhibits P-20 and P-22.

Besides, the name, as suggested in that "notice" is also not a "legal entity".The "notice" says.. "obtain judgement". Did the writer of this decision ever see that ? So much for the "competency" in the High Finance of America. [Now, HI has become a virtually defunct organization.. **Please see Exhibit P-54.** Submitted with my motion, in USDC.

USDC does not even refer to my submission of the P-54 to P-74 Exhibits anywhere, in the decision. That is not a mistake but a deliberate act.

17) "Household Bank filed a number of complaints around this time with the same infirmity". **[USDC-Decision &Order- P-4\Para 4\Line 6-7]**

Does the USDC consider that, by calling them "infirmaries" entitles the defendants to "run with the ball"? That therefore, such "infirmaries" should be to my detriment ?

I would call them **"misdemeanors and felonies"** in the NYS Penal Codes and the Federal Penal Codes. That is the very reason, the defendants, are, facing this Court.

The USDC "shrewdly" refused to refer to my Exhibits P-66

and P-67; wherein the State and Federal prosecutors have refused to, file charges against the R&R counsels, even though I filed detailed complaints and provided the "requisite proof".

This is how, "denial of equal protection of laws" triggers. Even though the Rockland DA is not named as a party defendant, that "inaction and refusal" [given to me in writing] is sufficient demonstrative, as to the "systemic deprivation and discrimination" I have claimed to be, the "norm" of the conduct and "customs and practice" in the "law enforcement.

I would strongly suggest, that, such "discrimination" is the result of the fact that, I am a member of "minority". It is reasonable to draw such inference, since there is no "acceptable" reasons, that is "justifiable" under the circumstances.

Is it not interesting that, the USDC is using the **FRCP rule 12**, so "offensively towards my case" and has refused the acknowledge the "penal violations" of the defendants.

Has Congress authorised **such "predatory" use** in Motion Practice ? Does that not "conflict" with the objectives of finding the truth ?

18) "Plaintiff does not allege any misstatements, misrepresentations or injuries in connection with the 1996 action."**[USDC-Decision &Order- P-5\Para 1\Line 6-7]**.

I have attached the Exhibits 49 to 53 and have claimed that, the 2nd complaint was also fraudulent. [Sofact paras 166 to 169] . All of which demonstrate, that, Joseph Latona's "sworn complaint" served upon me and filed in the Court, is

also subject to same Penal Violations as shown heretofore. In view of the fact, Joseph Latona's BP contradicts the complaint, in substance, that R&R could not proceed further and are "stopped in track".

In order to understand the complaint, it must be read; FIRST.

It was necessary for me to "properly prepare my responses, which required, quite a bit of research and work. I am not required to offer the details of damages in the complaint but must only allege the violation, which I have done so.

19) "Plaintiff's civil rights and negligence claims (counts 1-7) are barred because they brought within the three-year statute of limitations."...**[USDC-Decision &Order- P-5\Para 3\Line 1-2].**

I have filed my claims, pursuant to the **CPLR 213**, subdivision 1 and subdivision 8. I have briefed this matter, in details in my motion practice as well as in the MacCartney Brief, under USCA Docket No. 00-7090 [Reply Brief pages 13 to 15].

20) "All of Plaintiff's civil rights claims arose prior to October 5, 1996." **[USDC-Decision &Order- P-5\Para 4\Line 4-5]**

Since these claims are for "frauds" in Judicial Proceedings, my arguments are the same as in the item 19) above.

Now, I would like to refer to the very famous case, before Judge Korman [Chief Judge in Eastern District Of NY] wherein the "victims of Holocaust, sued the "Swiss Banks" and have **received [or there is an agreement for] a settlement of $ 1.25 BILLION DOLLARS**. Have they not made their claims after 50 years ? In the reading of the news,

in NY Times, on or about July 28, 2000; I did not get any impression that the Court struck down any of the claims, as time barred.

Is there a "custom and practice" in this Circuit, to "treat people of different origins and ethnicity, with different results?"

While as, USDJ McMahon used every "tactic" to circumvent the Constitution, Laws and the Supreme Court decisions, to dismiss my claim. Where is my "equal protection" guaranteed under the 5th amendment ?

For that reason, I have claimed, in my complaint; in the Civil Rights section, para 37 to 41, I have stated that, according to the laws and constitution "I do not have to be anyone particular" to receive equal protection. But reality is otherwise.

21) "It is a well established that attorneys are not state officers, but private persons for the purpose of Civil Rights Act"..**[USDC-Decision &Order- P-7\Para 3\Line 6-8]**.

May I refer to MacCartney Brief, under USCA Docket No. 00-7090 [Brief pages 33 to 38]. and I would also offer the following as the authority; This Court in *Texaco Inc. v. Pennzoil Co.,* 784 F.2d 1133, 1145 to 1147. (C.A. 2 (N.Y.) (1986) has held

> [O]ur ruling in *Dieffenbach v. Attorney General of Vermont,* 604 F.2d 187 (2d Cir.1979), supports the conclusion that a party acting pursuant to a state court judgment is not necessarily insulated from the reach of s 1983. In *Dieffenbach* we found that a bank was subject to suit under s 1983 when it utilized an

> allegedly unconstitutional foreclosure procedure to enforce a judgment against a mortgagor. We noted that in order to execute the judgment the bank was required to obtain a decree of foreclosure and that possession could only be gained by obtaining a writ from the clerk of the court which must be executed by a sheriff. *Id.* at 194 and n.12.

This record, amply demonstrates, that, the R&R counsels obtained the Judgement from Rockland County Judge and the Clerk. It would not have been possible, to secure such judgement except with the help of the "Rockland County Officials". Besides, the record also shows, that, the R&R defendants abused the "judicial system" with Fraudulent Evidence and each of they knew [who wants to deny that ?] that the Judgement, they enforced was "full of crime".

The R&R used the CPLR article 52, to serve the information subpoena, upon my banks and that "froze my funds".

Had the R&R defendants, "not enforced the judgement" in the manner they did [which was possible only after, Ed Gorman's [county clerk] signature stamp was placed on it. Without that, the "piece of paper" could have been nothing but garbage.

So there are at least two sets of acts involved

1) to obtain judgement by fraud and

2) to enforce it.

Defendants, used the State Laws, to enforce it. Short lived, as it was, the defendants "acquired official right" to enforce the Judgement [only with a signed order from J. Rudolph - a NYS Supreme Court Justice, in their hand] upon AK.

Personnel in Rockland County Court Clerk's office, would not have issued the Judgement, without a Court Order, in the "court File".

Thereby each defendant became a "state actor"... they saddled themselves with the Civil Rights violations under 42 USCA 1983.

22) "That by filing a meritorious summary judgement motion, the Rubin & Rothman Defendants denied plaintiff his constitutional right to a jury trial and infringed upon his First Amendment Rights."[**USDC-Decision &Order- P-8\Para 2\Line 5-7]**

I am appalled that, the USDC considers that the SJ Motion, that, the defendants filed in Rockland Action, was "meritorious".This comment turns the entire "Jurisprudence" upside down

I would offer my entire MacCartney Appendix, Brief and Reply Brief, under USCA Docket No. 00-7090; wherein the issues have been discussed in great details.

23) "Plaintiff appears to be under the misunderstanding that one is entitled to a trial before a jury in every Court case without regard to whether there exist any triable issues of fact."**[USDC-Decision &Order- P-8\Para 22\Line 7-9]**

Trial by Jury, is guaranteed by **NYS Constitution**, under **Article 1**.. [Bill of Rights] section 2.;unless waived by a party. The record is "replete" that, in fact I demanded the trial according to **CPLR 2218** and **CPLR 3212** and wanted to question Debra Shepherd, for the veracity of her affidavit.

The defendants can claim, whatever they want. As long as, I

did not waive my rights, any claims to the contrary are not of any consequence.

24) "Extortion under both the Federal and NewYork law requires "that obtaining of property of another, with his consent, induced either by wrongful use of actual or threatened force, violence or fear, or under color of official right."**[USDC-Decision &Order- P-10\Para 4\Line 3-5]**

It is a fact, that,

1) defendants used the "judicial process" to intimidate me.

2) as a result of their acquiring a judgement by fraud even for a short duration as it was] the defendants acquired "official right" to enforce the judgement.

3) In that process, the defendant's "deprived me the enjoyment and use" of my property and systematically caused damage to my constitutional rights.

4) those are the rights protected by the N. Y. Constitution as well as the U. S. Constitution.

5) the process was "extortionate" in every aspect, since the defendants did not have any right even to try to recover money from me, because they had conducted their business, in violation of laws and had "prosecuted the case" in violation of the laws and constitution.

25) "Congress could not have intended that the mail fraud

statute sweep up correspondence between attorneys, dealing at arm's length on behalf of their parties.." **[USDC-Decision &Order- P-11\Para 2\Line 12-14]**.

I would offer my entire MacCartney Appendix, Brief and Reply Brief, under USCA Docket No. 00-7090; The Reply Brief pages 11 and 12 discuss this, with references to U. S. Supreme Court cases.

In addition to which, I would like to offer the following:

> [L]anguage of the statutes that Congress enacts, provides "the most reliable evidence of its intent". For that reason we typically begin the task of statutory construction by focusing on the words that the drafters have chosen". *Holloway the United States* 526 U.S. 1, 6 [1999]. The Court referred to Justice White's opinion in *United States v. Turkette, 452 US 576,593 (1981).*
>
> Justice Thomas in his dissenting opinion observed, "[i]f the intent of Congress is clear, that is the end of the matter" for the Court. *Cedar Rapids Community School District v. Garret F.* 526 US 66, 80 (1999). *Citing National Credit Union Administration v. First Nat. Bank & Trust Co.; 522 US 479, 499-500 (1998).*

26) "Last, Plaintiff has no standing to complain about alleged misrepresentations made to others, and therefore paragraphs 136 -147 of the Statement of Facts, and the Exhibits associated with them are stricken pursuant to federal FRCP Rule 12(f)."[

USDC-Decision &Order- P-13\Para 2\Line 10-13]

Indeed this "opinion" is absolutely wrong. The evidence presented establishes the "pattern of conduct" of the defendants. This shows that, the defendants were conducting their affairs, in similar manner, over a long period of time and that it was their "usual and customary practice to operate, that way". **This is an integral part of pleading in RICO claims**.

Not only those statements and the exhibits speak louder, in support of my claim but the Exhibits no, P-57 to P-64, even "add a longer time period" to show, that HI defendants had "other counsels, representing them, perpetrate other "misconduct" and I would suggest that, HI benefitted from those litigations and received substantial amount of money.

Besides, the USDC decision, does not even state, the "reason" the portion was stricken. Since the "material and relevant" evidence supports RICO claims, against all defendants, they must be re-instated in their entirety.

Is there any wonder, that, after striking portion of my complaint and before that, by NOT READING or accepting to have read anything properly, the USDC issued it's decision, as we see it ?

27) " Plaintiff does not and cannot plead reliance because all of the alleged "misrepresentations" appeared in legal papers in the course of adversary litigation; they were not statements made by Household upon which plaintiff relied on changes position in reliance there on. "**[USDC-Decision &Order- P-13\Para 3\Line 10-14]**

Based upon the record in this case, the Federal Statutes and

U. S. Supreme Court decision USDC conclusions are **"factually unsupported in the record of this case,** it is **"totally" misleading, is UNTRUE** and corrupts the Court record.

Given the existing US Constitution and the Laws [either State or Federal] in this Jurisdiction, USDC should not have "offered" such protective shield to the attorneys and the HI defendants.

"Reliance" on the misrepresentation is not the issue but the "issue is that of misrepresentations, themselves".

> [I]n the first situation, typified by *Mooney v Holohan*, 294 US 103, the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony and that the *prosecution knew, or should have known, of the perjury*. In a series of subsequent cases, the Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. It is this line of cases on which the Court of Appeals placed primary reliance. In those cases the Court has applied a strict standard of materiality, not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process. *UNITED STATES v AGURS* 427 US 97, 103-104; [Emphasis added by AK]
>
> **fn7** In Mooney it was alleged that the petitioner's conviction was based on perjured testimony "which was knowingly used by the prosecuting authorities in order to obtain that

conviction, and also that these authorities deliberately suppressed evidence which would have impeached and refuted the testimony thus given against him." 294 US, at 110.The Court held that such allegations, if true, would establish such fundamental unfairness as to justify a collateral attack on petitioner's conviction.

"It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation." Id., at 112,

Fn8 Pyle v Kansas, 317 US 213; Alcorta v Texas, 355 US 28; Napue v Illinois, 360 US 264; Miller v Pate, 386 US ; Giglio v United States, 405 US 150 ; Donnelly v DeChristoforo, 416 US 637.

Fn10 "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 US, at 87 83 S Ct 1194. Although in Mooney the Court had been primarily concerned with the

willful misbehavior of the prosecutor, in Brady the Court focused on the harm to the defendant resulting from non-disclosure. See discussions of this development in Note, The Prosecutor's Constitutional Duty to Reveal Evidence to the Defendant, 74 Yale LJ 136 (1964); and Comment, Brady v Maryland and The Prosecutor's Duty to Disclose, 40 U Chi L Rev 112 (1972).

The above remarks in the *US v Agurs*, supra confirm, that, my claims are supported by the U. S. Supreme Court.

At least Justice Rudolph, **did not consider** that he could accept the 2nd fraudulent affidavit of HI employee Valerie Melvin, **to reaffirm the Judgement** [P-16]. Nevertheless, Justice Rudolph refused to even acknowledge that, defendants R&R and HI had submitted another fraudulent affidavit. That would have created "indelible record" of defendant's misconduct.

This is how the "customs and practices" of the Law Enforcement Officials [at every level... state or Federal] cause "discrimination" towards an ordinary person. Most of the time, the average person does not even realise it nor can he do much about it. Since the attorneys representing the average persons can be "as incompetent" in their "duties" as the "corrupt officials" can be in their "duties"... a "just"resolution always "evades the average person.

That is the reason, I have called that, the enforcement of the laws is carried out by the "enforcers" with basic principle:

1) who will benefit from enforcement

2) who will be affected by the enforcement

3) what effect it will have on the opinion of

the majority in the society

and when it come to the person of the "minority community" ... each of that person is expendable and must be at the "short end of the pole".

Lastly, the **Bradley v Fisher**.... in fact "trounced" the U. S. Constitution, under the guise of the "Common Law Immunity"... but consider the following paragraph, from it:

> [I]f upon such allegations a judge could be compelled to answer in a civil action for his judicial acts, not only would his office be degraded and his usefulness destroyed, *but he would be subjected for his protection to the necessity of preserving a complete record of all the evidence produced before him in every litigated case, and of the authorities cited and arguments presented, in order that he might be able to show to the judge before whom he might be summoned by the losing party--and that judge perhaps one of an inferior jurisdiction--that he had decided as he did with judicial integrity*; and the second judge would be subjected to a similar burden, ...*Bradley v. Fisher*. 80 US 335, 349; [1872]

Bradley opinion makes it very clear, that, "record keeping" was not considered, such an important aspect of Court Administration. It was impossible for the Bradley Court to imagine the present facilities and equipment we have. "Bradley era" could not even dream about them. I have already touched on the issue of the MacCartney case "Court Transcript".

We are still honoring the Common Law Immunity issues, based upon some of the Judgements of that era, to protect a few and to the detriment of millions.

Did the Bradley opinion "instruct" any of the Judges to

"violate and or offend the constitution "?

In fact the earlier comments about Judge's Oath, are as follows and cannot be forgotten.

> [W]hy otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!
>
> [T]he oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as, according to the best of my abilities and understanding agreeably to the constitution and laws of the United States." *Marbury v. Madison.* 1 Cranch 137, 180;

It is my urgent plea to this Court, that:

1) Whoever wrote the decision, in my both cases, failed to or refused to READ my complaints and my submissions in the ensuing motion practice.

2) The sole objectives of the wrongful decisions, have been to discriminate against me.

3) As to what will happen when criminal cases come before USDJ McMahon and those

particularly pursuant to **28 USCS 2254,** etc.

I have raised the "issues, for this appeal" and request this Court to kindly take Judicial Notice of the "Adjudicated cases, the Laws in effect in this Jurisdiction and the Constitution" to review the matter.

Following is from my Petition for Reargument in Second Circuit

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Summary Of Arguments- In Petition for Reargument

1) The Principal Arguments for this " request for rehearing" is the "absolute fact", that, USDC denied "Equal Protection of Laws" in the USDC proceeding to this appellant and "violated my rights" guaranteed by the 5th Amendment of the U. S. Constitution.

2) I presented my claims, in accordance with statutory requirements, the "standard established" by the Unites States Supreme Court; for recovery of damages, I suffered; arising out of multiple frauds, defendants knowingly perpetrated against me; during the1995 & 1996 NY State Court proceedings.

3) The Decision, Order and the Judgement in the Kashelkar v MacCartney matter [CA2NY Docket No. 00-7090] forms the basis of every element, in the Decision, Order and the Judgement issued by the USDC, in this matter. *MacCartney* matter is "intertwined" with this case, in numerous respects.

4) USDC ignored all the proof, I submitted; clearly showing "defendant's misconduct" under the "signatures" of

the Federal defendants and their agents, that is admissible against their interest.

6) In this manner USDC chose to, effectively " protect and immunize all the defendants", by "offensively using it's authority" to dismiss my case, under **FRCP Rule 12 ,** contrary to the mandate of Congress.

7) On account of the above, I have properly raised the issues, relating to the USDC granting "protection to the defendants" contrary to any Statutes or Constitution, under discussions in the matter.

8) In the event this Court, for any reason does not wish to reach a decision, that it "legally" must reach; then this appellant respectfully requests this Court, to "certify" the question, for resolution, by an "En Banc" hearing in this "Court" or "certify" to the United States Supreme Court, for ultimate resolution; in the same manner, as the then 8th Circuit Court Judge, Justice Blackmun did, in **Jones v Alfred H. Meyer Co.** 378 F. 2d 33 [1967]; that was reversed by the USSC under 392 US 409 [1968].

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